

ARKANSAS SUPREME COURT

No. 07-913

JAMES WESLEY JOHNSON
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION and GREGORY
HARMAN, WARDEN
Appellee

Opinion Delivered October 23, 2008

PRO SE APPEAL FROM THE CIRCUIT
COURT OF LEE COUNTY, CV 2007-
71, HON. HARVEY L. YATES, JUDGE

AFFIRMED.

PER CURIAM

In 1990, appellant James Wesley Johnson was found guilty by a jury of two counts of delivery of a controlled substance. He was sentenced as a habitual offender to forty years' imprisonment on each count. Appellant sought a belated appeal of the judgment which was denied. *Johnson v. State*, RC 90-64 (Ark. May 20, 1991) (per curiam).

Thereafter, appellant unsuccessfully filed numerous petitions for postconviction relief in Arkansas state courts. In 2007, appellant filed a petition for writ of habeas corpus in the circuit court of the county where he was incarcerated at that time. The court denied the petition, and appellant has lodged an appeal here from the order.

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there was evidence to support it, the appellate court after reviewing the entire

evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

An appellant is entitled to a writ of habeas corpus pursuant to Arkansas Code Annotated §§ 16-112-101 to -123 (Repl. 2006) only where he demonstrates that the commitment order is invalid on its face or that the convicting court lacks jurisdiction. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). In the instant matter, appellant's contentions¹ need not be considered as appellant is not entitled to habeas relief for two reasons.

First, appellant is not presently incarcerated in relation to the 1990 convictions. The purpose of a habeas corpus writ is to secure the release of a prisoner who is wrongfully incarcerated. Ark. Code Ann. § 16-112-103(a)(1). Correspondence from appellant to this court indicates that he is no longer incarcerated, and he is thus not entitled to habeas relief in this matter.

In addition, appellant is no longer subject to the personal jurisdiction of the circuit court in Lee County. The noted correspondence indicates that appellant now resides in Pulaski County, and a court cannot release a prisoner who is not in custody within that county. *Johnson v. State*, CR 06-1486 (Ark. Mar. 8, 2007) (per curiam)² (citing *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991)); accord *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam). As appellant no longer resides in Lee County, the circuit court no longer has personal jurisdiction over appellant

¹Appellant's habeas petition filed below was premised upon arguments concerning a prior postconviction petition filed pursuant to superceded Arkansas Rule of Criminal Procedure 36.4. When petitioner was convicted in 1990, Arkansas Rule of Criminal Procedure 37.1 had been abolished and this state's postconviction remedy was encompassed in Rule 36.4. This rule was later abolished and Rule 37.1 was reinstated in a revised form on January 1, 1991, as our postconviction remedy. *In the Matter of the Reinstatement of Rule 37 of the Arkansas Rules of Criminal Procedure*, 303 Ark. Appx. 746, 797 S.W.2d 458 (1990) (per curiam).

²This decision affirmed denial of appellant's petition for writ of habeas corpus that he filed immediately prior to filing the instant petition.

to issue a writ of habeas corpus.

Affirmed.